

## **WASHINGTON STATE BOARD OF OPTOMETRY**

### **MINUTES OF MEETING**

A meeting of the Washington State Board of Optometry was called to order at 9:00 a.m., on December 5, 2003, by R. Richard Ryan, Jr., O.D., Chair. The meeting was held in the Department of Health Administrative Offices, 20435 72nd S, Second Floor, Kent Washington, Conference Room One.

**BOARD MEMBERS PRESENT:** R. Richard Ryan, O.D., Chair  
Lund Chin, O.D.  
Mary Lou Staples, Public Member  
Thomas Riley, O.D.  
Jeffrey Sutro, O.D.  
Ben Wong, Jr., O.D.

**STAFF PRESENT:** Gail Yu, Assistant Attorney General  
Kristen Mitchell, Assistant Attorney General  
Judy Haenke, Program Manager  
Melissa Quirke, Administrative Assistant

**OTHERS PRESENT:** Sherri Egashira, O.D., Optometric Physicians of  
Washington (OPW)  
Earl Tower, OPW  
Diane Charles, Opticians Association of Washington  
Randy Ray,

### **ORDER OF AGENDA**

#### **OPEN SESSION:**

##### **1. Call to Order**

###### **1.1 Approval of Agenda**

The agenda was approved with the following changes:

- Review and approval of the November 14, 2003, minutes of the joint meeting of the Board of Optometry and Board of Pharmacy.
- Review and approval of the November 24, 2003, Board meeting minutes.
- Consideration of requests for extension of continuing education reporting period.
- Summary of proposed draft legislation for 2004.

- Discussion of ordering of labs and radiological testing pertaining to the practice of optometry was added to Other Business.

1.2 Approval of Minutes of September 26, 2003, Meeting  
The minutes were approved with the following corrections:

- The spelling of Mike McCown, O.D. in two instances was corrected
- Reference to the date of the March 2004 seminar was corrected on Page 4.

1.3 Introduction of Assistant Attorney General, Board Advisor  
R. Richard Ryan, O.D., introduced Gail Yu, Assistant Attorney General, who has been recently appointed as legal advisor to the Board.

**2. Authorization for Oral Medication and Injectable Epinephrine Proposed Rules for Training, Oral Medications Formulary and Guidelines. - Action**

2.1 Report and recommendation from R. Richard Ryan, O.D. and Thomas Riley, O.D.

Dr. Ryan reported that WAC 246-851-570 and WAC 246-851-600 related to training requirements for the prescription of oral drugs and injection of epinephrine for anaphylactic shock are scheduled to be filed with the Office of the Code Reviser by December 24, 2003. There will be a formal hearing held on January 28, 2004. Following the hearing, the rules would once again be filed with the Office of the Code Reviser for final adoption. The rules would go into effect thirty days after the final filing with the Office of the Coder Reviser.

Lund Chin, O.D., reported on the discussion held by the Board of Pharmacy at its meeting on December 3, 2004. At that meeting, the Board of Pharmacy was in agreement with the Optometry Board's November 24, 2003, draft of rules relating to the oral drug list, guidelines, and approval of new medications, with the exception of proposed rule WAC 246-851-590(8) and WAC 246-851-610.

Regarding WAC 246-851-590(8), the Pharmacy Board agreed with the following suggested changes:

8) Specific dosages for use and appropriate duration of treatment of oral medications listed in WAC 246-851-580(1) will be ~~in accordance with recognized standard of care.~~ consistent with guidelines established by the Food and Drug Administration.

The Pharmacy Board recommended the following language for WAC 246-851-610:

**WAC 246-851-610 Drug List Changes.** Changes to the oral drug list require approval of the Boards of Optometry and Pharmacy and will be made through the rules process by consultation and approval of the board of optometry and board of pharmacy. Consultation and approval will follow the joint policy established by both boards.

(1) Changes to the oral drug list will include

- (a) New medications or classes of medications approved by the Food and Drug Administration in the categories on the approved list of drugs.
- (b) New medications or classes of medications approved by the Food and Drug Administration in the categories that are within the scope of optometric physician practice but were not previously part of the oral drug list.
- (c) Medications or classes of medications that pose safety concerns and need to be removed from the list.

(2) The Boards of Optometry and Pharmacy will use a joint process to determine changes to the oral drug list that includes a means to resolve disagreements.

## **2.2 Rule Writing Work session**

The Board considered language proposed by the Board of Pharmacy for WAC 246-851-610. Following discussion, the Board further amended this proposed rule as follows:

**WAC 246-851-610 Approval or removal of medications.** The Boards of Optometry and Pharmacy will use a joint process to determine changes to the oral drug list that includes a means to resolve disagreements. (1) Categories of medications approved by the Food and Drug Administration shall be added to WAC 246-851-580(1) by rule through consultation and approval of the board of optometry and board of pharmacy. (2) Medications approved by the Food and Drug Administration in categories that are within the scope of optometric physician practice that are not included in WAC 246-851-580(1) shall be added through consultation and approval of the board of optometry and the board of pharmacy. Approval shall follow the joint process established by both boards. (3) WAC 246-851-580 and WAC 246-851-590 shall be updated to reflect additions or removal of medications.

In response to concerns raised by the Washington Academy of Eye Physicians and Surgeons, the Board also considered a draft that combined WAC 246-851-580 and WAC 246-851-590 into one single rule.

Thomas Riley, O.D., commented that he had researched similar rules of other states. He found that when the rules which set forth the approved oral medications and guidelines for use were combined, they were too long, and that when reviewing other state's rules that had separate rules for listing drugs and providing guidelines for use, they were easier to understand.

R. Richard Ryan, O.D., added that the intent may be clouded if the two rules were combined, because the categories may not be as clear. Further, the list of oral drugs in WAC 246-851-590 is clear and stands alone. WAC 246-851-590, the guidelines, should be the rule that is most often changed. People will be more comfortable in changing the guidelines versus changing the oral list.

Mary Lou Staples stated that she was formerly in favor of combining the rules, but having seen the combined version, she now favors the rules being separate.

Kristen Mitchell, AAG stated that there is legally no difference how the rules are organized, but if the Board is looking at the process of future revisions of this rule, it is more efficient to separate them.

The Board approved the revised wording of WAC 246-851-590(8).

### **2.3 Approval of course instructors**

Dr. Sherri Egashira inquired to the Board whether the instructors for the Advanced Ocular Therapeutics Workshops can instruct if they have not yet taken the didactic portion of the course. Following discussion, the Board agreed that it is not unusual for the first instructors of a certifying course to not themselves be certified but that the instructors should be otherwise qualified to teach the course.

### **2.4 Approval of pre-existing educational programs**

There have been a number of inquiries whether the Board will accept completion of other similar programs in place of the specified training for oral medication and epinephrine injection. For example, many licensees have asked (though not formally) whether the Board will accept the training they have completed for the state of Oregon.

Following discussion, the Board agreed that it would review each course individually once the requirements are set and alternate courses are received for review. It may not be possible to “grandfather” coursework completed before the implementation of SB 5226.

### **3. Presentation of Orders**

The Board accepted a Stipulated Findings of Fact, Conclusions of Law and Agreed Order for Gary Kitzrow, O.D.

The Board considered an order in closed session. The Order was considered in closed session because information in the case is protected from public disclosure.

### **4. Delegation for the Reviewing Board Member to move a case to investigation without full board review.**

The Board reviewed a proposed policy/procedure, which, in cases where an investigation is clearly indicated, the Board would have a clear delegation to the case manager, that in certain kinds of alleged violations, the case manager may authorize an investigation without presentation of the case before the full Board. The advantage will be a quicker investigation resulting in better protection of the public and less need for extension in the timelines process.

The Board revised the proposed policy to read that violations include laws as well as rules and added the abuse of drugs or alcohol. Staff will finalize the policy.

### **5. Recommendation for Driver Reexamination**

There is no state or federal law mandating that health care providers report unsafe drivers to the Department of Licensing. It is not clear but is also possible that this may violate HIPPA-related regulations.

### **6. Change in American Optometric Association designation as an endorsement state.**

The American Optometric Association (AOA) has refined the guidelines for licensure by endorsement states. Previously, Washington state was identified by the AOA as an endorsement state, but will now be removed from the list. The primary change that caused the removal from the list is:

- The guidelines now specify that your law must require licensure by endorsement candidates to apply for a license that grants them full prescriptive authority and the candidate must have the opportunity to qualify for that prescriptive authority through “equivalent standards”.

In Washington, under the current tier system, candidates are not required to apply for a license at full prescriptive authority.

The Board agreed to obtain additional information from The American Optometric Association and the Association of Regulatory Boards of Optometry before determining whether to further pursue this matter.

## **7. Request for continuing education reporting extension.**

The Board approved the following extensions:

- Guy R. Boswell, O.D. – Approved through March 5, 2004
- Kerry J Moscovitz, O.D. – Approved through January 1, 2004
- Gregory R Barcus, O.D. – Approval pending receipt of documentation

## **8. Proposed Rules Amendments**

Jeffrey Sutro, O.D., reported that the Board reviewed the final version of amendments to WAC 246-851-160 and WAC 246-851-170. These proposed changes have been discussed in open session by the Board at its meetings on March 2003, June 2003 and September 2003 meetings.

The proposed amendments provide for:

- Credit for reports – typewritten reports on publications
- Credit for preprogrammed material such as correspondence courses and courses offered through the internet.

Up to ten credits can be granted for reports. A maximum of 25 credits can be earned in the two combined categories. Staff will prepare the finalized version for filing.

## **9. 2004 Post Graduate Education Seminar**

### **9.1 Speakers for 2004**

Speakers for the March 14, 2004, seminar will be:

- Donald Williams, RPh, FASHP – Drug Seeking Behavior
- Kirk Smick, O.D. – Dry Eye Disease and Multifocal IOL
- Steven Laukaitis, M.D. – The Stuck Punctal Plug
- Jennifer Smythe, O.D. – Contact Lens Update

## **9.2 Other Seminar Business**

Notices for the March event will be mailed in Mid December.  
The Board requested that staff maintain a roster of comments received by licensees in response to the seminar being reduced to one day for 2004.

## **10. Tier Licensing Nationally**

Dr. Ryan spoke briefly about the national trend to require licensure to be obtained at the highest level available in that state so as to avoid multiple levels, or tiers, or licenses which may confuse the public and other entities such as insurance companies and might also limit the mobility of practitioners. Dr. Jeffrey Sutro agreed to look further into this matter and to report back to the Board at a subsequent meeting.

## **11. Change in accreditation from the Council on Optometric Education**

The Accreditation Council on Optometric Education will increase the maximum length of accreditation for professional optometric degree programs from seven to eight years. At the same time, the Council will implement annual reports that are due beginning on May 1, 2004.

This process will be reevaluated by the ACOE in three years to determine if the accreditation can be granted for up to ten years. This will depend on the information obtained in the annual reports.

## **12. Tennessee House Bill 1116**

Under this bill a manufacturer, wholesaler, or retailer of ophthalmic materials who leases space to an optometrist shall not, directly or indirectly, control or attempt to control or influence through a lease or other indirect means the professional judgment or practice of an optometrist.

The Bill sets requirements for leases between an optometrist and a manufacturer, wholesaler or retailer of ophthalmic materials.

Dr. R. Richard Ryan commented that this bill was presented for information only and that it would probably meet opposition from fairly substantial entities if proposed in Washington.

Considering that the Washington statutes regarding leases are similar to that of Tennessee, it is possible that similar issues with lease arrangements being used to influence O.D.'s may occur in Washington. (A court case is what prompted the Tennessee law.) Dr. Ryan wanted to make the Board of Optometry aware of this possibility.

**13. Report on November 10, 2003, Board Education Seminar, - R. Richard Ryan, Jr., O.D.**

The Governor's Office facilitated receptions honoring all members and staff of boards or commissions. The receptions were held on four different dates and locations statewide. Events at the reception include a session on group dynamics and working as a board member, a discussion about working with the Governor's office before the legislative session begins, and finally, a primer on ethics.

Members of the Board who attended include: R. Richard Ryan, O.D., Lund Chin, O.D. and Mary Lou Staples, Public Member.

**14. Continuing Education Courses - Action**

**14.1 Review of Courses Submitted for Approval.**

The following courses were approved by the Board.

"Update on Wavefront Technology", "Lumps, Bumps & Growths of the Conjunctiva and Adnexa", "LASEK- Somewhere Between PRK and Lasik" , "OHTS, Rosacea, and Refractive Surgery Update", lectures presented by Pacific Cataract and Laser Institute, presented on November 21, 2003, in Spokane, Washington. Course approved for 6 hours.

"Pharmacology/Clinical Considerations of the Tetracyclines" a lecture by Ben Stoeber, O.D., and "Tisseel or Not", a lecture by Paul Shenk, M.D., submitted by Pacific Cataract and Laser Institute, presented on July 11, 2003, in Brush Prairie, Washington. Course approved for 2 hours.

"LASIK and Refractive Update" a lecture by Mark Everett, O.D., submitted by Pacific Cataract and Laser Institute, presented on August 15, 2003, in Spokane, Washington. Course approved for 1.5 hours.



"The Optic Nerve in Glaucoma & Summary of OHTS" a lecture by Mark Everett, O.D., submitted by Pacific Cataract and Laser Institute, presented on September 19, 2003, in Spokane, Washington. Course approved for 1.5 hours.

"Surgical Management of Glaucoma", a lecture by Lori Youngman, O.D., submitted by Pacific Cataract and Laser Institute, presented on September 11, 2003, in Olympia, Washington. Course approved for 1 hour.

"Neuro-Optometry" a lecture by James Guzek, M.D., "Dry Eye: The Most Common LASIK Complication", a lecture by Doug Hansen, O.D., "Update on Herpetic Eye Disease Study (HEDS I, II)", a lecture by Doug Hansen, O.D., and "Refractive Surgery Update" a lecture by Rick Burk, O.D. submitted by Pacific Cataract and Laser Institute, presented on October 37, 2003, in Richland, Washington. Course approved for 3 hours.

"Treatment Strategies for the Problem Focused Exam" submitted by Northwest Eye Surgeons. Lectures presented on November 6, 2003, in Woodinville, Washington. Course approved for 4 hours.

"Contemporary Corneal Reshaping with CRT Lenses" submitted by the American Optometric Association, presented on October 23, 2003, in Seattle, Washington. Course approved for 1 hour.

#### **14.2 Designation of Reviewer Through March 5, 2004**

Lund Chin, O.D., will be primary reviewer for the period ending on March 5, 2004. Thomas Riley, O.D., will be backup.

#### **15. Budget Report - Information**

The Board reviewed revenue and expenditures for the month ending October 31, 2003.

#### **16. Election of Officers for 2004**

The following officers were elected for 2004:

- Chair, Thomas Riley, O.D.
- Vice Chair, Jeffrey Sutro, O.D.
- Secretary, Mary Lou Staples

## **17. Set Meeting Dates for 2004**

The following meeting dates were set for 2004:

- March 12, 2004
- June 4, 2004
- September 17, 2004
- December 3, 2004

## **18. Other Open Session Business**

### **18.1 Review of Legislation**

A summary of Department of Health request legislation related to health professionals was considered, including:

#### **Eliminating credentialing barriers for sex offender treatment providers.**

Provides for credentialing of certified affiliate sex offender treatment providers.

“certified affiliate sex offender treatment provider” means a licensed, certified, or registered health professional who is certified as an affiliate to examine and treat sex offenders pursuant to Chapters 9.94A and 13.40 RCW and sexually violent predators under Chapter 71.09 RCW under the supervision of a certified sex offender treatment provider.

#### **Revising the department of health’s health professions disciplinary authority.**

The secretary may compel the immediate production of health care and financial records regarding an investigation when authorized by an administrative investigation warrant.

**Rather than filing a statement of charges, a written notice of action imposing any sanction may be issued to a licensee. If the licensee wished an adjudicative proceeding, the action will be of no effect until the adjudicative proceeding is held**

#### **Increasing the regulation of the sale of ephedrine, pseudo ephedrine and phenylpropanolamine.**

**The sale of ephedrine, pseudo ephedrine and phenylpropanolamine shall not exceed five percent of the total sales. Records must be maintained.**

#### **Eliminating credentialing barriers for health professions.**

Amends the hourly requirements for approved courses and removed the requirement for patient treatments for acupuncture.

Creates a limited license for dental hygiene.

Allows the psychology board to designate an examination.

Allow registered nurses to perform practices for 90 days if the person is a member of a professional organization and holds a certificate deemed by the board to meet standards equivalent to chapter.

The Board also reviewed draft legislation proposed by Representative Campbell to “streamline the uniform disciplinary act’s investigative process. This is not department of health request legislation. The department is neutral at this point.

Excerpt from Bill:

“...there are concerns with the growing backlog of cases handles by the boards and commissions taking years to settle. A more streamlined system for complaint processing, including intake, investigative strategies, selection of appropriate sanctions, and settlement strategies, prior to final decisions, could be more efficiently by the secretary of health, leaving the voluntary citizens and professionals on the disciplinary boards and commissions as juries with the ultimate disposition of cases, including acceptance of negotiated settlements hearings, and sanctioning.....Further, the adoption of uniform sanctioning guidelines by the secretary of health and professional boards and commissions for a fair and uniform disposition fall categories of cases, complaints, and violations will provide standards of equitable treatment across professional lines.”

This bill would remove power from the board’s and commission’s and place them under the Secretary of the Department of Health, including: Boards and Commissions would still issue final orders after hearing.

Jeff Sutro, O.D., stated he was deeply troubled about removing the expertise that a peer board member brings to the process of determining whether an offense has been committed, that damage had occurred, and what would be an appropriate sanction for a violation if one has been determined to have occurred. He did not feel the consumer would be properly protected if the process, as he understood it, were instituted according to the proposed legislation. Dr. Sutro’s comments were seconded by Dr. Chin and Public Member, Mary Lou Staples in discussion.

R. Richard Ryan, O.D., stated that the boards and commissions are the bodies that are most appropriate to know what was the damage that was suffered, what was the patient’s action and what was the doctor’s action. Without the knowledge of the practitioners facts related to a case may be overlooked or may slip through the cracks allowing an unqualified person to continue to practice.

If there is a backlog of cases, then a more efficient method of processing cases should be developed. It is not likely that each profession has a backlog of cases.

## **CLOSED SESSION**

### **19. Review of Licensing Applications**

The Board approved three licensing applications.

### **20. Disciplinary Case Review**

**The following cases were reviewed:**

<b>CASE NUMBER</b>	<b>ACTION</b>
2003-10-0003OD	Closed below threshold
2003-11-0001OD	Closed
2003-10-0002OD	Closed below threshold
2003-10-0001OD	Closed, no whistle blower release.

**ADJOURNMENT:** Being no further business, the meeting was adjourned at 4:00 p.m.

Respectfully Submitted:

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Judy Haenke

Approved:

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R. Richard Ryan, O.D., Chair